IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.875 OF 2004
IN
NOTICE OF MOTION NO.3529 OF 2004
IN
L.C. SUIT NO.4055 OF 2004

M/s.Narang D. Enterprises
@ Mars Food Services ... Appellant

V/s.

Municipal Corporation of
Greater Bombay ... Respondent

Mr.A.C. Singh for Appellant
Mr.J. Xavier for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 5, 2004**

P.C.:

. The present Appeal from Order has been filed challenging the order of the trial Court dated 29.9.2004. By this order, the trial Court has refused to grant any ad-interim injunction as prayed for. It appears that ad-interim injunction was sought from the trial Court earlier and by an order dated 6.9.2004, the trial Court had refused the same on various counts including that the appellant is using the garage in his occupation to run a restaurant and has constructed a mezzanine floor without permission. The trial Court had observed that there was no document to show that the

mezzanine floor was in existence prior to 2000-2001. Being aggrieved by this order, the appellant had filed Appeal from Order No.815 of 2004 which has been disposed of on 17.9.2004. The appellant was given the liberty to withdraw the Appeal from Order and proceed with the Notice of Motion and the Appeal from Order came to be dismissed as withdrawn. At the same time, the trial Court was directed to hear the Motion as early as possible and at any rate within six weeks from the date of the receipt of the order. Despite this observation, it appears that a second application was moved by the appellant contending that they had found some documents to show that there is in existence a mezzanine floor in 1992-93. The assessment extract of the year 1992-93 was sought to be relied on. The learned Judge has held that the additional documents do not show the legality of the suit structure. However, the respondents have been directed to produce the assessment records prior to 1992-93 and to submit their reply to the Notice of Motion.

2. In my view, this Appeal from Order is not maintainable as there is already a direction passed by this Court in the earlier Appeal from Order No.815 of 2004 for disposing of the Notice of Motion within six weeks of the order. Rather than delaying the hearing of this Notice of Motion by taking out a further Motion,

the Appellant ought to have proceeded with the hearing of the Notice of Motion. It has been sought to be argued on behalf of the appellant that the documents showing the existence of the loft/mezzanine floor in 1992-93 was not brought on record earlier and was required to be considered by the Court in the present Motion. These documents could also have been produced in the earlier Notice of Motion rather than adopting any dilatory tactics. It is submitted that such structures are being regularised and, therefore, the same may be permitted to continue till the Motion is heard and disposed of. This submission, according to me, is without any basis as the policy adopted is to regularise the mezzanine floor/loft which is in the regular structure i.e., in the building itself. This being a garage which has been used for running a restaurant, such a structure prima facie cannot be regularised. In any event, there is no need to grant any interim order at this stage. Appeal from Order dismissed.

3. In view of the dismissal of the Appeal for Order, nothing survives in the Civil Application and the same is disposed of accordingly.